REMARKS

These amendments and remarks are filed in response to the Office Action dated July 21, 2009. For the following reasons this application should be allowed and the case passed to issue. No new matter is introduced by this amendment. The amendments to claims 1 and 17-24 are supported by originally filed claims 2 and 7. Claims 3, 6, 8, and 17 are amended to maintain proper dependency.

Claims 1, 3-6, 8, 11-14, 16-20, 23, and 24 are pending in this application. Claims 1-24 were rejected. Claims 1, 3-6, 8, 11-14, 16-20, 23, and 24 are amended in this response. Claims 2, 7, 9, 10, 15, 21, and 22 are canceled in this response.

Objections to the Abstract

The Examiner objected to the Abstract because it is not in narrative form and is more than a single paragraph.

In view of this objection, a new Abstract is included in this response.

Objections to the Claims

Claims 4, 5, and 7-16 were objected to as being in improper multiple dependent form because a multiple dependent claim cannot depend from another multiple dependent claim.

In response to this objection, the claims have been amended to remove the improper multiple dependencies.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 3, 5, 7, 8, and 17-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Nelson (US 5,766,622). The Examiner asserted that Nelson teaches a fruit juice-containing food product (liquid cold/cough composition) comprising a fruit component (citric

acid), base having sweetness (sucrose), refreshing feeling substance (menthol), and cooling feeling substance (MPD).

Nelson does not anticipate the fruit juice-containing food product and methods because Nelson does not disclose a fruit juice-containing food product is a fruit juice-containing beverage, and the fruit component is a straight fruit juice or a concentrated fruit juice or blends of two or more fruit juice components, as required by claims 1, 17, 18, 19, and 20. Nelson's liquid cold/cough composition product does not contain a fruit juice, as required by claims 1, 17, 18, and 20. Citric acid may be component of some fruit juices, but it is not a fruit juice. Furthermore, as is clear from the Examples in the present specification, a decrease in a light feeling of a fruit juice-containing beverage is suppressed even when the beverage is stored for a long time under warm conditions.

Applicants further submit that Nelson does not suggest the claimed fruit juice-containing food product and methods. There is no suggestion in Nelson that a decrease in a light feeling of a fruit juice -containing beverage is suppressed even when the beverage is stored for a long time under warm conditions. As explained in the specification, heavy sweetness at taking and after taking based on a fruit component and a base having sweetness is suppressed in the fruit juice-containing beverage of the present invention. The present invention provides a light feeling both at taking and has a high acceptability in taste (specification at page 1, 1st para.).

Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of Nakatsu et al. (US 5,545,424). The Examiner acknowledged that Nelson does not teach an additional flavor improving substance. The Examiner relied on Nakatsu et al.'s teaching of 4-(1-menthoxymethyl)-2-phenyl-1,3-dioxolane and its derivatives to assert it would have been obvious to combine Nakatsu et al. with Nelson to prolong the cooling sensation.

Claims 1-6, 9, 10, 17, 18, and 21-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapdelaine et al. (US 5,326,574) (Chapdelaine et al.`574) in view of Chapdelaine et al. (US 4,938,971) (Chapdelaine et al. `971). The Examiner averred that Chapdelaine et al. `574 discloses a food product (chewing gum) comprising a base having sweetness, a refreshing feeling substance (peppermint or spearmint oil), and a cool feeling substance (3-1-menthoxypropane-1,2 diol). The Examiner noted that Chapdelaine et al. `971 is directed to fluid fruit juices incorporated into chewing gum and concluded that it would have been obvious to combine Chapdelaine et al. `971 with Chapdelaine et al. `574 in order to enhance the chewing gum.

Claims 13 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapdelaine et al. `574 in view of Chapdelaine et al. `971 and Nakatsu et al. The Examiner acknowledged that Chapdelaine et al. `574 and Chapdelaine et al. `971 do not teach an additional flavor improving substance. The Examiner relied on Nakatsu et al.'s teaching of 4-(1-menthoxymethyl)-2-phenyl-1,3-dioxolane and its derivatives to assert it would have been obvious to combine Nakatsu et al. with Chapdelaine et al. `574 and Chapdelaine et al. `971 to prolong the cooling sensation.

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapdelaine et al. `574 in view of Chapdelaine et al. `971 and Spencer (US 5,047,251). The Examiner acknowledged that Chapdelaine et al. `574 and Chapdelaine et al. `971 do not teach the range of refreshing feeling substance. The Examiner relied on Spencer's teaching of 0.01% of peppermint oil as a flavoring agent to assert it would have been obvious to combine Spencer et al. with Chapdelaine et al. `574 and Chapdelaine et al. `971 because peppermint has excellent flavor and visual characteristics.

Claims 11, 12, 23, and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapdelaine et al. `574 in view of Chapdelaine et al. `971 and Tezuka et al. (US 4,514,423). The Examiner acknowledged that Chapdelaine et al. `574 and Chapdelaine et al. `971 do not teach a fruit juice-containing dairy product. The Examiner relied on Tezuka et al.'s teaching of incorporating ice cream into chewing gum to combine Tezuka et al. with Chapdelaine et al. `574 and Chapdelaine et al. `971 to provide chewing gum with improved properties.

Claim 16 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapdelaine et al. `574 in view of Chapdelaine et al. `971 and Tezuka et al. and further in view of Nakatsu et al. The Examiner acknowledged that Chapdelaine et al. `574, Chapdelaine et al. `971, and Tezuka et al. do not teach an additional flavor improving substance. The Examiner relied on Nakatsu et al.'s teaching of 4-(1-menthoxymethyl)-2-phenyl-1,3-dioxolane and its derivatives to assert it would have been obvious to combine Nakatsu et al. with Chapdelaine et al. `574, Chapdelaine et al. `971, and Tezuka et al. to prolong the cooling sensation.

Nelson, Nakatsu et al., Chapdelaine et al. `574, Chapdelaine et al. `971, Spencer, and Tezuka et al., whether taken alone, or taken in combination, do not suggest the claimed fruit juice containing food product and methods, because Nakatsu et al., Chapdelaine et al. `574, Chapdelaine et al. `971, Spencer, and Tezuka et al. do not suggest the fruit juice-containing food product is a fruit juice-containing beverage, and the fruit component is a straight fruit juice or a concentrated fruit juice or blends of two or more fruit juice components that additionally contains (a) one or more refreshing feeling substances and (b) one or more cool feeling substances, as required by claims 1 and 17-20, 23, and 24. In addition, none of the cited references suggest the benefit of the present invention that a decrease in a light feeling of a fruit

juice-containing beverage is suppressed even when the beverage is stored for a long time under warm conditions.

For example, Nakatsu et al. disclose 4-(1-menthoxymethyl)-2-phenyl-1,3-dioxolane or its derivatives, but there is no disclosure of a beverage containing a fruit juice and a base having sweetness in Nakatsu et al. Thus, there is no suggestion to combine Nakatsu et al. and Nelson to achieve the claimed product and methods.

Chapdelaine et al. `574 discloses a chewing gum containing 3-1-menthoxypropane-1,2-diol, to provide a cool feeling but there is no suggestion of a beverage containing a fruit juice and a base having sweetness. Further, there is no suggestion of decreasing a heavy sweetness, as is provided by the present invention. Likewise, in Chapdelaine et al. `971, there is no suggestion to use 3-1-menthoxypropane-1,2-diol in a beverage containing a fruit juice to decrease heavy sweetness.

While Spencer may teach the use of 0.01% peppermint oil as a flavoring agent, there is not suggestion in Spencer of using peppermint in a beverage containing a fruit juice and a base having sweetness to decrease a heavy sweetness, as is provided by the present invention.

Tezuka et al. disclose a combination of ice cream in bubble gum. Tezuka et al. does not suggest adding components (a) and (b) to a beverage containing fruit juice and a base having sweetness and/or reducing heavy sweetness of a beverage containing fruit juice and a base having sweetness.

Obtaining the claimed composition and methods from the cited references by one of ordinary skill in this art would be the equivalent of finding a needle in a haystack in view of the many possible combinations. Clearly, one of ordinary skill in this art would not have been lead, by either the references themselves or common sense, to pick and choose individual elements

from the cited references to arrive at the claimed fruit juice-containing food product and methods. It is clear, that the Examiner's conclusion of obviousness is rooted in impermissible hindsight reasoning using Applicants' disclosure as a road map.

Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006); *In re Kotzab,* 217 F.3d 1365, 1370 55 USPQ2d 1313, 1317 (Fed. Cir. 2000); *In re Jones,* 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); *In re Fine,* F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Nelson, Nakatsu et al., Chapdelaine et al. `574, Chapdelaine et al. `971, Spencer, and Tezuka et al., whether taken alone, or taken in combination, because the cited references do not suggest the fruit juice-containing product or methods wherein the fruit juice-containing food product is a fruit juice-containing beverage, and the fruit component is a straight fruit juice or a concentrated fruit juice or blends of two or more fruit juice components, and the food product additionally contains one or more refreshing feeling substances and one or more cool feeling substances, as required by claims 1, 17, 18, 19, and 20; nor does common sense dictate the Examiner-asserted modification. *See KSR Int'l Co. v. Teleflex, Inc.*, 500 U.S. ____ (No. 04-1350, April 30, 2007).

The only teaching of the claimed fruit juice-containing food and methods are found in Applicants' disclosure. However, the teaching or suggestion to make a claimed combination and the reasonable expectation of success must not be based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The dependent claims are allowable for at least the same reasons as independent claim 1, and further distinguish the claimed fruit juice-containing food product.

In view of the above remarks, Applicants submit that this application should be allowed and passed to issue. If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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